



Defence Home Ownership Assistance Scheme Bill 2008

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Law and Bills Digest Section

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Defence Home Ownership Assistance Scheme Bill 2008

Date introduced: 28 May 2008

House: House of Representatives

Portfolio: Defence

Commencement: Sections 1 and 2 on the day on which it receives the Royal Assent; sections 3 to 85 on the later of, the day on which it receives the Royal Assent, or 1 July 2008.

Links: The [relevant links](#) to the Bill, Explanatory Memorandum and second reading speech can be accessed via BillsNet, which is at <http://www.aph.gov.au/bills/>. When Bills have been passed they can be found at ComLaw, which is at <http://www.comlaw.gov.au/>.

Purpose

The purpose of the Bill is to establish a home ownership assistance scheme which will be available to eligible members of the Australian Defence Force (ADF) who are serving on or after 1 July 2008. Members are offered progressively higher levels of benefits as an incentive to remain in active service.

Background

The former Government's White Paper entitled [Defence 2000: Our Future Defence Force](#) highlighted the need for the ADF to retain skilled and experienced people, noting that it was a priority concern for the Government to ensure that people do not leave the ADF when they are of most value.¹

The White Paper followed on the heels of a [report](#) by the Australian National Audit Office on retention of military personnel.² The objective of the audit was to review the management of personnel retention within the ADF with a view to evaluating the measures Defence has in place to monitor, and control, the flow of trained personnel from the Services. It found that Defence was making considerable efforts to ensure that the

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1. Defence 2000: Our Future Defence Force, Commonwealth of Australia, Canberra, p. 63.
 2. The Auditor General, 'Retention of Military Personnel Australian Defence Force', *Audit Report No. 35 1999-2000 Performance Audit*, Commonwealth of Australia, Canberra, 3 April, 2000.

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conditions of service for members did not become a factor in members' decisions to separate from the military.

In 2003, the Australian National Audit Office published a follow up [report](#) which concluded that:

action to reduce the flow of members from the ADF would save resources lost in the training of members who leave and in the resources that need to be applied to train their replacements. Expenditure on retention has the potential to be much more cost effective than expenditure on recruitment and training.³

Despite the recognition of the importance of effective retention of trained personnel, the ADF suffered something of a 'recruitment and retention crisis' in 2005.⁴ This followed the release of the results of the 2004 Defence Attitude Survey which showed that one in three military personnel surveyed wanted to quit on the grounds of, amongst other things, poor pay and conditions.⁵

The Australian Strategic Policy Institute reported that despite spending \$500 million over five years on initiatives to improve the recruitment and retention of military personnel, the process of building ADF numbers had stalled. Not only had the size of the permanent ADF fallen for two years in a row but the average strength achieved in the financial year 2004/05 was almost a thousand below the target that had been set.⁶ These diminishing numbers occurred at a time when Australia was deploying personnel to a diverse range of activities. Major General Michael Jeffery listed the expected future calls on the ADF as follows:

- Regional Assistance Missions to provide support throughout the South West Pacific in similar ways to the assistance which had already been provided to the Solomon Islands
- United Nations contributions in the prevention of genocide and famine and for health support functions
- countering terrorism locally, regionally and globally, and

3. The Auditor General, 'Retention of Military Personnel Follow Up Audit Department of Defence', Audit Report No. 31 2002-2003 Performance Audit, Commonwealth of Australia, Canberra, 5 March, 2003, p. 27.

4. John Kerin, 'Career soldier's days are numbered', *Australian*, 24 May 2005, p. 2.

5. General News, 'Any volunteers?', *Adelaide Advertiser*, 25 May 2005, p. 21.

6. Max Blenkin, 'Call for rethink as army recruiting shrinks', *Canberra Times*, 11 August 2005, p. 9.

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- disaster support to the civil community.⁷

Defence HomeOwner Scheme

The [Bills Digest](#) for the Defence Force (Home Loans Assistance) Amendment Bill 2007 provides the following information about the current Defence HomeOwner Scheme (DHOS).

The DHOS was introduced in 1991 to assist eligible members and ex-members of the Australian Defence Force to purchase their own home by providing a subsidy on the interest of a home loan borrowed from the approved lender, the National Australia Bank.

The scheme is administered in accordance with the *Defence Force (Home Loans Assistance) Act 1990* (the 1990 Act). The Defence Housing Authority administers the scheme on behalf of the Department of Defence.

Under the current scheme, ADF personnel must serve a set period ('basic service period') before qualifying for the scheme. The basic service period is:

- regular service personnel who are still serving - five years of continuous effective full-time service, or
- regular service personnel with less than 15 years of effective full-time service, and have been discharged with a compensable disability - basic service period is waived, or
- active and emergency reserve personnel still serving after 8 November 1996 - eight years of continuous efficient service (where the annual statutory training obligation has been met each financial year).

However, regular service personnel with warlike (Somalia, Cambodia, East Timor, Afghanistan and Iraq) or operational service need not serve the basic service period in order to qualify. Warlike service is the period of service in an operational area defined as warlike by the Minister for Defence.

Normally, eligible ADF members are entitled to one year of subsidy for each completed year of service after completing their respective basic service period, up to a maximum of 20 years of subsidy. Members with warlike service are eligible for an extended subsidy period.

7. Major General Michael Jeffery AC CVO MC, *Address at the Chief of Army's Conference Dinner*, Canberra, 22 September 2005.

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The subsidy is equal to 40% of the average monthly *interest* on the loan, calculated on a 25 year loan period. The maximum loan amount eligible for the subsidy is \$80,000 per ADF member (a married or defacto couple who were both eligible ADF members could get \$160,000).

Review of the Defence HomeOwner Scheme

In May 2006 a [review](#) of the scheme, which was due to end on 31 December 2006, was announced. The purpose of the review was to examine ways of improving the DHOS and to take advantage of the more competitive conditions in the house finance market.⁸ The *Defence Force (Home Loans Assistance) Amendment Act 2006* extended the life of the scheme for a further year so that the review could be carried out.

In the 2007/08 Budget, the then Minister for Defence, the Hon. Dr Brendan Nelson, released some details of the Government's response to the Review. The key proposals would:

- replace the old home loans assistance scheme
- provide contemporary and relevant home loan assistance which would reflect housing prices
- provide increasing entitlements as members serve beyond key exit points
- be responsive to changes in the housing market, and
- provide flexibility and choice by giving a number of mortgage providers.

The *Defence Force (Home Loans Assistance) Amendment Act 2007* provided for a further extension to the DHOS to 30 July 2008 to allow time for the new Scheme, announced in the 2007 Budget, to be fully developed and implemented.

However, relevant legislation had not been introduced when Parliament was prorogued on 15 October 2007.

Coalition position

The Hon. Bob Baldwin has stated that the coalition supports the Bill on the grounds that the new DOHS was a Howard government initiative and the 2007/08 budget provided relevant funding.⁹

8. Mark Davis, 'Defence staff's generous housing aid tipped for review', *Australian Financial Review*, 9 May 2006, p. 4.

9. Hon. Bob Baldwin MP, *House Hansard*, 4 June 2008, p. 32.

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This bills digest should be read in conjunction with the [Bills Digest](#) for the Defence Home Ownership Assistance Scheme (Consequential Amendments) Bill 2008.

Financial implications

The financial implications of the new home ownership assistance scheme are:

- Defence will meet the ongoing monthly subsidy payments.
- Defence will meet administrative costs of the scheme, including assessing applications for entitlement and payment of subsidy.
- Defence will pay Fringe Benefits Tax in relation to the subsidy, which is a reportable fringe benefit.

The costs of the above will be, to some extent, offset by payment by loan providers to the Commonwealth, of a premium amounting to \$169.87 million over 10 years. All costs and revenue will be dependant on the extent of take-up of subsidised loans under the scheme.¹⁰

This Bill will require funding for the scheme to be provided as an administered appropriation to the Department of Defence. The 2008-09 [Federal Budget](#) approved funding of \$988.965 million over the period 2008-09 to 2017-18.

Main provisions

Part 1 contains preliminary provisions.

Part 2 – Eligibility

The definitions in **clause 3** which are relevant to this section are:

‘Compensable condition’ means a condition, disease, illness or injury suffered by a person for which compensation is, has been or would be payable under the following:

- the *Safety, Rehabilitation and Compensation Act 1988*
- the *Veterans’ Entitlements Act 1986*
- the *Military Rehabilitation and Compensation Act 2004* or
- a law of the Commonwealth prescribed by regulations.

10. Explanatory Memorandum, p. 1.

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‘Effective service’ is service in the Defence Force by the person in accordance with the regulations.

‘Foreign service member’ means a member of the Defence Force who had been a member of the armed forces of a foreign country.

‘Partner’ – a person is the partner of another person if the two persons have a relationship as a couple (whether the persons are different sexes or the same sex) and ordinarily live with each other on a permanent and bona fide domestic basis.

‘Permanent Forces’ means the Permanent Navy, the Regular Army or the Permanent Air Force.

‘Reserves’ means the Naval Reserve, the Army Reserve or the Air Force Reserve.

Clause 5 provides that, for the purposes of the Scheme, a person who has been engaged as a member of the Reserves will be treated as a member of the Reserves until their engagement ends or, when in a service year, the person does not perform effective service.

Clause 7 lists the categories of persons who will be eligible to participate in the home ownership assistance scheme as:

- a serving member
- an incapacitated member
- a rejoining incapacitated member
- a rejoining member
- a separated member
- an old scheme member.

A person is eligible as a **‘serving member’** at a particular time (referred to as the ‘eligibility time’ throughout this Part) if the person is a member of the Defence Force and has completed the relevant ‘qualifying service period’: **subclause 8(1)**. **Subclause 8(2)** provides that the ‘qualifying service period’ is 4 years of ‘effective service’ for a member of the Permanent Forces or a foreign service member; and 8 years of ‘effective service’ for a member of the Reserves.

A person is eligible as an **‘incapacitated member’** if the person ceased being a member of the Defence Force on or after 1 July 2008 because of a ‘compensable condition’ and has not become a member again: **clause 9**.

Clause 10 provides that a person is eligible as a **‘rejoining incapacitated member’** if:

- the person stopped being a member of the Defence Force due to a compensable condition and
- on or after 1 July 2008, again became a member of the Defence Force

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- no more than five years elapsed between the time the person stopped being a member of the Defence Force and their return and
- at the eligibility time, the person is a member of the Defence Force who has completed the ‘relevant qualifying service period’.

Subclause 10(2) provides that the ‘qualifying service period’ is 4 years of ‘effective service’ for a member of the Permanent Forces and 8 years of ‘effective service’ for a member of the Reserves.

Clause 11 states that a person is eligible as a ‘**rejoining member**’ if:

- the person stopped being a member of the Defence Force, having been eligible immediately before that time and
- on or after 1 July 2008, again became a member of the Defence Force
- no more than five years elapsed between the time the person stopped being a member of the Defence Force and their return and
- at the eligibility time, the person is a member of the Defence Force.¹¹

A person is eligible as a ‘**separated member**’ if the person stopped being a member of the Defence Force on or after 1 July 2008, was eligible immediately before they stopped being a member, and has not again become a member of the Defence Force: **clause 12**.

A person is eligible to participate in the home ownership assistance scheme as an ‘old scheme member’ if the person meets the requirements prescribed by the regulations: **clause 13**.

Part 3 – Subsidy Certificates

This Part sets out the process by which an eligible person can apply for, and be provided with, a ‘subsidy certificate’. Once issued, the subsidy certificate can be given to a loan provider as evidence of eligibility for subsidy under the home ownership assistance scheme.

A person must apply to the Secretary¹² for a subsidy certificate on the approved form: **clause 14**. Once the person’s application has been lodged, the Secretary **must** give a subsidy certificate if the provisions of clauses 17 to 20 apply: **subclause 16(2)**.

Under **clause 17** a subsidy certificate **must** be given to a person who:

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11. This allows a person to count a prior period of service in the ADF as ‘effective service’ under the Scheme.
 12. Secretary is defined in **clause 3** as the Secretary of the Department.

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- is eligible
- does not already hold a subsidy certificate which is in force and
- where the person is not a member of the Defence Force, has not already applied for a subsidy certificate.

Subclauses 17(2) and (3) provide some qualification to the entitlement of an eligible person to obtain a subsidy certificate as follows:

- For an ‘incapacitated member’, the Secretary **may** give the subsidy certificate if the application is made within two years of the time that the person stopped being a member due to their compensable condition, or the Secretary is satisfied that the compensable condition caused or contributed to the person’s failure to apply within two years: **subclause 17(2)**.
- For a ‘separated member’ the Secretary **may** give the subsidy certificate only if the application is made within two years of the date the applicant stopped being a member of the Defence Force: **subclause 17(3)**.

Under **clause 18** a subsidy certificate **must** be given to a person where:

- the applicant is the surviving partner of a deceased partner¹³
- the deceased partner was eligible immediately before their death¹⁴ and
- the person has not already applied or been given a subsidy certificate in respect of the deceased partner.

Subclauses 18(2) and (3) provide some qualification to the rights of a surviving partner’s entitlement to obtain a subsidy certificate as follows:

- the Secretary **may** give the subsidy certificate only if the application is made within two years of the time of the death of the deceased partner, or the date the deceased partner ceased to be a member of the Defence Force, whichever, is the earlier: **subclause 18(2)**
- the Secretary has the discretion to extend the two year application period for a further year if satisfied that the late application was reasonable: **subclause 18(3)**.

Clause 19 provides an exception to the time limits imposed under **clauses 17 and 18** where a subsidised loan has been discharged because the property that secured the loan has been destroyed, compulsorily acquired under a Commonwealth, State or Territory law

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13. **Clause 4** defines ‘deceased partner’ as the partner who died, and ‘surviving partner’ as the partner of the deceased partner.
 14. This means that a surviving partner only has the same eligibility rights as their partner had at the time of death. There is no automatic eligibility for a surviving partner.

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or sold or transferred under an order of a Court. In those circumstances the Secretary must give a subsidy certificate as long as the relevant application is made within 12 months after the subsidised loan was discharged.

Clause 20 provides an exception to the time limit for issue of a subsidy certificate for an incapacitated member. A subsidy certificate must be issued in circumstances where the person was discharged from the Defence Force for a compensable condition and finds it necessary to move to another house because of factors directly attributable to that condition.

Clause 22 provides the period during which the subsidy certificate is in force. The period starts on the day stated on the subsidy certificate. The period ends on the earliest of the day the subsidy commences, the day the certificate is cancelled or 12 months after the date that the subsidy certificate was issued.

The Secretary may vary a subsidy certificate if it contains an error: **clause 24**. The Secretary may also cancel a subsidy certificate in circumstances where it was given as a result of a false or misleading statement or where the person was not entitled to be given the certificate: **clause 25**.¹⁵

Part 4 - Subsidy

The definitions in **clause 3** which are relevant to this part are:

‘House’ means a single dwelling, including a unit that is a single dwelling, but does not include:

- a dwelling which is unfit for habitation
- a dwelling which is to be compulsorily acquired under a law of the Commonwealth, State or Territory or any local government authority
- a caravan, houseboat, or any other mobile dwelling or
- a flat that is not a unit.

‘Subsidised borrower’ means a person to whom subsidy is payable.

‘Subsidised loan’ means a loan in relation to which subsidy is payable.

‘Subsidised loan account’ in relation to a subsidised borrower who is party to a subsidised loan with a loan provider, means the loan account maintained by the loan provider in the name of the borrower in connection with the subsidised loan.

15. A decision to cancel a certificate is subject to administrative review under Part 5.

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‘Unit’ means a unit held under a strata title system established under a law of a State or Territory together with accompanying common property and any permanent improvement such as a garage or storeroom.

Once a subsidy certificate has been issued, the amount of subsidy to which the eligible person is entitled and the manner in which it will be paid has to be determined.

Entitlement to subsidy

Clause 26 provides that subsidy is payable as **either or both** a monthly subsidy or a subsidy lump sum.

Clause 28 provides that subsidy becomes payable when:

- the loan is made by a declared loan provider¹⁶
- the loan is secured by a mortgage over an interest in land and
- the conditions in clauses 29 to 34 are satisfied.

Subclause 28(4) provides that subsidy is payable for only one loan at any one time.

Under **clause 30**, the Secretary must be satisfied that the loan which will be subsidised is to be used for any of the following:

- to buy land on which a house already stands
- to buy land on which a house is to be constructed, renovated or repaired (called ‘building work’)
- to undertake ‘building work’ on land which is already owned by the person or
- to discharge another loan which was used for any of the above purposes.

In addition:

- the subsidised borrower (or the subsidised borrower and their partner) must hold a 50% or greater interest in the land¹⁷ and the land must be in Australia: **clause 31**.
- where the subsidised loan is to buy land on which a house already stands, the subsidised borrower, or a dependant of the subsidised borrower, occupies the house as

16. The declared Home Loan providers are National Australia Bank, Australian Defence Credit Union Limited and Defence Force Credit Union Limited: Hon. Warren Snowdon, Minister for Defence, Science and Personnel, ‘Legislation for New ADF Home Loans Scheme on Track’, *Media Release*, 4 June 2008.

17. The interest can be either as joint tenants or as tenants in common.

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a home : **clause 32**, for at least the first year after the first authorisation day for the subsidy: **clause 39** and

- the land is not used primarily for carrying on a business, trade or profession: **clause 33**.

Clause 34 sets out the conditions in which a subsidy lump sum (rather than monthly subsidy) becomes payable. It provides, amongst other things, that a subsidy lump sum is payable only for the first home that the member has purchased while the borrower has been a member of the Defence Force: **paragraph 34(1)(f)**.

Clause 36 contains a table which sets out events and critical times. Any of the events which are listed will cause subsidy to stop being payable. Subsidy ceases to be payable from the start of the monthly authorisation period in which the critical time occurs.

In addition, subsidy will stop being payable if:

- building work is not completed within 2 years after the first authorisation day for subsidy: **clause 37**
- if the subsidised borrower holds an interest of less than 50% in the land: **clause 38** or
- where the subsidised loan is to buy a house and land, or to build a house, the subsidised borrower does not occupy the house as a home for at least one year from the date of the first authorisation day for subsidy, unless there are exceptional circumstances: **clauses 39 and 40** respectively.

Clause 42 requires a subsidised borrower to give notice to the Secretary of any change in circumstances which would cause the subsidy to stop being payable within a reasonable time after the subsidised borrower became aware of the event (called the ‘constructive knowledge time’).

A subsidised borrower may request the Secretary, on the approved form, to stop the payment of the subsidy: **clause 43**.

The Secretary may, by written notice to the subsidised borrower, revoke the authorisation of the payment of subsidy where the Secretary is satisfied that it should never have been given or was given because of a false or misleading statement by the borrower or another person: **clause 44**.¹⁸ Where an authorisation is revoked, the subsidy that has been paid is taken to have never been payable and may be recoverable by the Commonwealth: **subclause 44(4)**. Where the subsidised borrower has died, the Commonwealth may give notice that the authorisation has been revoked to the borrower’s legal personal representative: **subclause 44(6)**.

Clause 45 provides that an authorisation may be varied when a subsidised borrower has not provided effective service in a year when they were a member of the Reserves. In that

18. A decision to revoke authorisation is a reviewable decision under Part 5.

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case, the borrower may be entitled to subsidy as a separated member. The Secretary must advise the subsidised borrower in writing that this may effect the subsidy amount.

Service credits

Clause 29 provides that subsidy becomes payable if the subsidised borrower has a subsidy certificate which is in force and has a 'service credit'.

The first step is to work out the person's '**accrued subsidy period**' in accordance with the table in **clause 47**.

Clause 46 contains the method statement for working out a person's 'service credit'. This is the difference between the number of months the person has undertaken specified service at any particular time (the 'accrued subsidy period') and the number of months during which the person has already been entitled to subsidy, including any subsidy under a previous scheme.

Clause 48 provides additional months of subsidy where a person has performed warlike service.¹⁹ **Subclause 48(2)** contains a table setting out the additional months of subsidy for periods of warlike service ranging from three months or less to more than nine months. According to **subclause 48(3)** where a person is repatriated from warlike service because of wounds, injury or illness, the additional months of service will be calculated as if the person continued to perform warlike service until the end of the period the Secretary considers that the person could reasonably be expected to have continued to undertake warlike service.

Amount of subsidy

Clauses 49-51 set out the necessary technical formulae for working out the amount of monthly subsidy. The formula in **subclause 50(2)** refers to the 'median interest rate'. **Clause 53** provides that the Minister may, by legislative instrument, either determine the 'median interest rate' or determine the method for calculating the 'median interest rate'.

In addition **subclause 51(2)** contains a table which sets out the limit of the amount of the subsidised loan payable to a subsidised borrower at a particular time. The amount payable is referable to 'the average house price'. **Clause 52** provides that the Minister may by legislative instrument determine the 'average house price' for the purposes of the Act in a financial year.

Clause 54 determines the method of calculating any subsidy lump sum which is payable to a subsidised borrower in accordance with the provisions of clauses 34 and 58.

19. Under **clause 3**, 'warlike service' means service in the Defence Force of a kind determined as warlike service for the purposes of the *Veterans' Entitlements Act 1986*, whether the determination is made, or the service performed, before, on or after the commencing day.

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How subsidy is paid

Clause 56 provides that the subsidy must be paid to the loan provider²⁰ in accordance with either **clause 57** or **clause 58** into the subsidised borrower's 'subsidised loan account' for the benefit of the borrower.

Clause 57 is about payment of monthly subsidy. It is payable to a loan provider in accordance with a loan agreement and any other relevant agreement or determination by the Minister: **subclause 57(1)**. The subsidy is paid on a monthly basis in arrears in respect of the most recently ended '**monthly authorisation period**'. This begins at the start of a day of one month, and end immediately before the start of a day of the next month: **subclause 57(3)**.

Clause 58 is about payment of a subsidy lump sum. It is payable to a loan provider in accordance with a loan agreement and any other relevant agreement or determination by the Minister: **subclause 58(1)**.

Subsidy for surviving partners

Clause 60 applies where subsidy was payable to a 'deceased partner' in respect of an interest in land which is held with the 'surviving partner' as joint tenants. In that case, the subsidy is transferred to the surviving partner and continues to be payable in the same way as it had been paid to the deceased.

Where the 'surviving partner' was not a joint tenant with the 'deceased partner' (**paragraph 61(1)(a)**) but their interest is transferred to the 'surviving partner' under a will or under an intestacy law (**paragraph 61(1)(b)**), the subsidy is suspended (**subclause 61(2)**) until the transfer takes place and will be back paid to the date of the suspension (**subclause 61(3)**).

Where the 'surviving partner' was not a joint tenant with the 'deceased partner' and does not inherit their interest in the land on which subsidy was payable, **clause 62** provides that:

- upon the death of the 'deceased partner' borrower the subsidy is suspended
- upon the transfer of the interest in the land to another person, the subsidy is taken to have stopped with effect from the start of the monthly authorisation period in which the death occurred.

Clause 63 gives effect to clause 18 whereby a 'surviving partner' is able to access a subsidy certificate loan under the same criteria as would have been applied to the 'deceased partner'. **Clause 64** contains a table which sets out the eligibility class for the

20. Under clause 3, 'loan provider' means a body corporate which makes (or which is to make) loans to persons in relation to which this Act applies.

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‘surviving partner’ so that they are treated in the same way that the ‘deceased partner’ would have been treated had they not died.

Recovery of overpayments

Overpayments under this Act will occur when the Secretary has paid an amount to a loan provider as subsidy into a subsidised loan account when the overpaid amount was not payable. In that case the debtor (that is, the subsidised borrower) must pay the amount due to the Commonwealth under **subclause 67(1)**. The amount owing is the overpaid amount plus interest at the ‘general interest charge rate’²¹ per day: **subclause 67(2)**.

Subclause 68(1) empowers the Secretary to give notice in writing to a loan provider of the amount of a debt which is to be deducted from an authorised loan account.²² **Subclause 68(2)** provides that the loan provider must comply with the notice by paying out of the borrower’s subsidised loan account either the whole of the debt due to the Commonwealth or, if there are insufficient funds in the subsidised loan account to meet the whole of the debt, then the amount available in the subsidised loan account.

Where a loan provider sells an interest in land by way of enforcing a mortgage securing the subsidised loan, then **clause 69** requires that the loan provider must pay the Commonwealth the amount of the debt out of any monies that the loan provider would otherwise return to the debtor.

Clause 70 empowers the Secretary to recover a debt due to the Commonwealth in a Court of competent jurisdiction.

Part 5 – Review of Decisions

Clause 71 lists all of the decisions which are ‘reviewable decisions’ under the Act.

Clause 72 specifically provides that a declared loan provider is not considered to be a person whose interests are affected by the scheme.

The Secretary must give notice in writing to all of the persons who are affected by a reviewable decision, including the reasons for the decision and the person’s right of review: **clause 73**. A person whose interests are affected by a ‘reviewable decision’ may apply to the Secretary for review of the decision. The application for review must be in the approved form (**subclause 74(2)**) and made within 28 days after the person was notified of the decision, or such longer period as the Secretary allows: **subclause 74(3)**.

21. ‘General interest charge rate’ is worked out under section 8AAD of the *Taxation Administration Act 1953*.

22. This is a reviewable decision under Part 5.

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The Bill provides for a two-tiered mechanism of review. The **first tier** is by way of internal review by a ‘reviewer’ appointed by the Secretary: **clause 75**. Where the Secretary personally made the decision in dispute, then ‘the reviewer’ will be the Minister.²³ Where a delegate of the Secretary made the decision in dispute, ‘the reviewer’ will be the Secretary, or another delegate who was not involved in making the reviewable decision.

The reviewer is empowered to confirm, vary or set aside the reviewable decision and substitute a new decision: **subclause 75(2)**.

The **second tier** provides for external review of an internal review decision by the Administrative Appeals Tribunal: **clause 76**. **Subclause 76(2)** specifically excludes a declared loan provider from appealing against an internal review decision.

Part 6 – Administration

Subclause 79(1) is about use and disclosure of the personal information of an applicant for subsidy certificate, a person who has been given a subsidy certificate, a person who is, or has been, a subsidised borrower and their partner or dependants.

Subclauses 79(2) and (3) provide that the following entities may use personal information, or disclose personal information to another of the entities, for a purpose prescribed by regulation:

- the Secretary
- a delegate of the Secretary under section 81 or the *Defence Force (Home Loans Assistance) Act 1990* (the 1990 Act) or the *Defence Service Homes Act 1918* (the 1918 Act)
- a loan provider who has received an application for a subsidised loan, or who has made a subsidised loan under this Act
- a Bank which has received an application for subsidised loan, or made a subsidised loan under the 1990 Act, and
- a credit provider who has received an application for a subsidised advance, or made a subsidised advance under the 1918 Act.

Clause 80 provides that the Minister may delegate to the Secretary or an SES employee or an acting SES employee, the power to determine an ‘average house price’ or the ‘median interest rate’. **Subclause 81(1)** provides that the Secretary delegate any of their powers

23. Under section 19A of the *Acts Interpretation Act 1901* ‘the Minister’ is the Minister for Defence.

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and functions to a Naval officer holding the rank of Commodore or higher, an Army officer holding the rank of Brigadier or higher, an Air Force officer holding the rank of Air Commodore or higher, or to an SES or acting SES officer in the Department.

The Secretary may also delegate any or all of their functions to an authorised Commonwealth contractor under **subclause 81(2)**.

Concluding comments

The Bill appears to be uncontroversial and to have general support from both the Government and the Opposition.

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